

1091608
DECISION



Proc II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D C. 20548**

10,429

FILE: B-193993

DATE: June 12, 1970

MATTER OF: Jazco Corporation

DIGEST:

1. Decision to procure certain brand name components as part of system based on need for standardization of ammunition-related equipment is reasonable and not overstatement of minimum needs.
2. Provisions of Public Law 95-507, such as those providing for waiver of bonding requirements, pertain only to "8(a) subcontracting" activities of the Small Business Administration and are not applicable to small business set-asides by procuring agencies.
3. Agency determination to procure nine systems as package rather than through separate procurements for materials and services or through a separate procurement for each system is matter primarily within agency discretion and will not be disturbed unless protester proves decision was unreasonable.
4. IFB for total small business set-aside may specify component parts identified by brand name to large business manufacturers, so long as small business will make a significant contribution to manufacture of the end item. Small Business Act is not violated by specifying large business components.

Jazco Corporation (Jazco), a minority controlled small business enterprise, protests IFB No. DAAG 49-79-B-0041, issued by the Tooele Army Depot. The IFB calls for the fabrication and installation of air pollution control systems (systems), connection of the systems to existing explosive waste incinerators and

start up support for the incinerators and the systems. The IFB designates the procurement as a total small business set-aside.

The protester raises a number of objections, directed in large measure to the specifications and their impact on small business firms. Each objection will be dealt with in turn; our decision denies each basis for protest.

The central issue, as we see it, is Jazco's objection to the Army's specifying several brand name components for the systems. Jazco, a supplier of similar components, alleges that the specification by brand name of a competitor's products prevented it from bidding as a general contractor. We have concluded that the specification of brand name components was proper because of the need for standardization of ammunition-related equipment.

Generally, specifications must be expressed in terms of the salient physical and functional characteristics necessary to meet the Government's minimum needs. This insures maximum competition in procurement. Defense Acquisition Regulation (DAR) 1-1206.1 (1976 ed.)). Where appropriate, the Government may designate an item as "brand name or equal" (DAR 1-1206.2 (1976 ed.)) and in some instances, procurement of only a brand name item will be necessary. Here, the systems being procured were not brand name items which would restrict the procurement to a sole source of supply, but certain brand name components were required. In such circumstances, many firms are eligible to compete, limited as they are by all specifications to what they could furnish. In reviewing this matter we will consider whether or not this procurement was unduly restrictive of competition. B-165555, January 24, 1969.

The Army points out that the present design and components were established and tested in a competitively procured pilot system. The solicitation for the pilot project contained no specification of brand name components, and Jazco could have participated in the pilot project. It did not elect to do so, and its current

situation is at least partly due to this fact. In addition, at present there are nine or more systems in existence at a number of locations. The Army has stated its reasons for simplifying certain brand name components as follows:

- "a. To maintain replacement stock levels for fewer models of equipment.
- "b. To maintain drawings and records that are applicable to all installations without having to note that some depots have different models of equipment.
- "c. Fabrication of components is simplified when working with only one set of drawings.
- "d. When making modifications or revisions to the design, we can standardize much easier, knowing that all systems are identical.
- "e. The job of field technical support and training of operators is more efficiently accomplished when dealing with identical systems.
- "f. Intercommunication between depots or between depots and Tooele Army Depot are [sic] greatly simplified.
- "g. The standardization of all air pollution control systems is cost effective to the government."

Additionally, we have been informed that the equipment as specified meets state air quality standards in all states where the systems will be used. If substitutions of critical components were to be made at this time, the Army states that the equipment would have to be retested in each state, causing considerable additional expense and delay.

The protester, on the other hand, argues that the Army's decision not to substitute equipment in these circumstances "only hampers progress due to undue regulations by the agencies." However, the protester's allegations that air quality regulations are unreasonable are not determinative of the reasonableness of the Army's decision to observe those regulations or to avoid the expense of retesting equipment.

The Army also points to the requirement for standardization in (DARCOM) Regulation 750-20 as a reason for requiring certain brand name components. This requirement would not necessarily be met by a procurement designated by the broader description "brand name or equal," even though such a description might have permitted consideration of Jazco equipment, at least one of which is identical in dimensions to the specified brand name component. A product description of brand name or equal "will not normally provide items of identical design." Brand-Rex Company, Teltronics Division, B-187546, December 15, 1976, 76-2 CPD 498. Although the DAR states at 1-1206.2(b) that the "or equal" description may note that interchangeability of parts is required, this may result in adaptations or modifications of established designs to meet specific requirements. Interchangeability and standardization of equipment are not co-extensive concepts.

We have also recognized unique needs of the military, holding that brand name requirements are reasonable when the items to be procured must fit into the existing military supply system and provide continuing logistical support. Boston Pneumatics, Inc., B-185000, May 27, 1976, 76-1 CPD 345.

Jazco argues that DARCOM regulation 750-20 does not prohibit the procurement of a Jazco system because it is offering the same subcomponents. By this we assume the protester means that its product line is merely similar to the specifications. Jazco has submitted information that one of its components, a cyclone, is identical in dimensions to the specified brand name part. Even assuming that its cyclone is also equal in quality, there is no demonstration by the protester

that the other components which it proposes to substitute would also be identical to the specified brand name components. Further, Jazco's statement that it offers the same component parts occurs in the context of a letter which details numerous design and specification changes which Jazco would suggest to improve the system. This makes it impossible to harmonize Jazco's offer of the "same subcomponents" with the agency's desire to standardize the systems.

On the above bases, it is apparent that the Army has not overstated its minimum needs in specifying brand name components and that this procurement does not unduly restrict competition. Furthermore, we note that the protester does not allege that it made any effort to obtain prices or other information from the designated suppliers. It appears that Jazco simply chose not to compete for this procurement based on its own business judgment. Therefore, we cannot say that Jazco was precluded from submitting a bid for this procurement.

Additionally, the Army advises us that, as Jazco alleges, the first systems did have some difficulty with fires in the baghouse. That problem was caused by improper instrumentation in the deactivation furnace and not by defects in the air pollution control system or in the baghouse itself, as alleged by Jazco. The Army stipulates that it has been completely remedied at this time. Hence, Jazco's assertions that its design and component changes would result in reduced fire hazard do not persuade us that a change in components is warranted for reasons of safety and efficiency.

The remainder of the protester's requests deal with matters related to the Small Business Administration (SBA), small business set-asides, and minority business concerns.

Protester requested that "the minority business provisions be incorporated and implemented by the Army." The Army reports that it attempted to secure a minority firm for the contract through the SBA's subcontracting program under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1976), as amended by Public Law

No. 95-507, 92 Stat. 1757. When the SBA was not able to provide a minority firm, the Army decided to conduct the procurement as a small business set-aside. The IFB contained the provision in FAR 7-2003 which requests bidders to identify whether they are minority-owned enterprises. The fact that no minority businesses submitted bids confirms the SBA's initial belief that minority firms were not available to satisfy the Government's requirements as specified.

The protester is correct in stating that the contract awarded should contain a clause to the effect that minority-owned businesses be given maximum consideration consistent with efficient performance of the contract in the awarding of subcontracts. Public Law No. 95-507, § 211, 92 Stat. 1757, 1767. However, that clause requires only that the successful bidder consider awarding subcontracts to small and minority businesses. By its terms that section does not regulate an agency's specification for a brand name component, nor does it prevent a successful bidder's use of specified components where required to do so by the IFB.

The protester's request that the bonding provisions be waived as provided in Public Law No. 95-507 is inappropriate as this procedure is applicable only in the context of SBA 8(a) subcontracting. See § 202.

Jazco's final objections deal with the structuring of the procurement. The protester asserts that the contract should have been divided between materials and fabrication, or alternatively that each system should have been contracted for singly. It is alleged that this would facilitate the participation of small business.

In cases where protesters have urged that procurement should have been divided into several smaller procurements, we have consistently held that if the agency's decision to procure on a package basis is reasonable, this office will not interfere. Allen and Vickers, Inc.; American Laundry Machinery, 54 Comp. Gen. 445 (1974), 74-2 CPD 303; Ampex Corporation, B-191132, June 16, 1978, 78-1 CPD 439.

The fact that four bids were submitted creates a strong presumption that the procurement was not unduly restrictive, and the burden is on the protester to prove the contrary. Aside from suggesting that small business would be better served by multiple contracts, Jazco has not offered any information which warrants questioning the agency's judgment.

Implicit in Jazco's protest is the contention that the congressionally endorsed policy favoring small business is violated in this procurement because the specified brand name components are identified to large business manufacturers. However, a contract award to a small business concern under a small business set-aside is proper, even when some work will be performed by large business concerns. 49 Comp. Gen. 41 (1969); Sampson Electronics, Inc., B-190863, January 4, 1978, 78-1 CPD 4 (74 percent of work subcontracted to large business); J. & H. Smith Mfg. Co., Inc., B-186303, July 14, 1976, 76-2 CPD 45 (majority of work subcontracted), and large business manufactured component parts may be specified in the IFB for a small business set-aside. Kinetic Systems, Inc., B-189146, July 1, 1977, 77-2 CPD 5.

Despite the fact that four of seven component parts were specified as large business products, the solicitation does not preclude performance of a majority of the work on the contract by small business. Tasks which could be completed by small business include obtaining all other supplies, construction of support structures, assembly of the systems, connection to the deactivation furnace of the explosive waste incinerators and provision of technical assistance in the start up of both systems. It is obvious that these activities constitute a significant contribution to the performance required under the solicitation.

The protest is denied.

R. P. K. Allen
Deputy Comptroller General
of the United States